IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA.No. 323 of 2000()

OPMV.1733/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANTS/PETITIONERS:
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1. ELSY JOSE, AGED 39 YEARS, WIDOW OF GOPURATHINGAL VARGHESE JOSE (G.V.JOSE), NOW RESIDING AT KOONAMMAVU HOUSE, SANJO NAGAR, MURINGOOR P.O., MUKUNDAPURAM TALUK.

2. DEEPU JOSE, AGED 10 YEARS (MINOR), S/O.LATE G.V.JOSE, RESIDING AT KOONAMMAVU HOUSE, SANJO NAGAR, MURINGOOR P.O., MUKUNDAPURAM TALUK.

3. DILMON JOSE, AGED 9 YEARS (MINOR), S/O.LATE G.V.JOSE, RESIDING AT KOONAMMAVU HOUSE, SANJO NAGAR, MURINGOOR P.O., MUKUNDAPURAM TALUK.

4. PLAMENA VARGHESE, AGED 66 YEARS, W/O.GOPUNRATHINGAL VARGHESE, RESIDING AT KARAYAMPARAMBU DESOM, ALWAYE TALUK, KARUKUTTY P.O., ERNAKULAM DISTRICT.

(2 AND 3 MINORS ARE REPRESENTED BY NEXT FRIEND AND GUARDIAN THEIR MOTHER ELSY JOSE)

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS:
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1. V.M.ABBAS, VADAKAYIL, KUNNAM, THODUPUZHA, ERNAKULAM DISTRICT.

2. G.V.POULOSE, S/O.VARGHESE, GOPURANTHINGAL KUTTIPUZHAKARAN HOUSE, KARAYAMPARAMBU, KARUKUTTY P.O., ERNAKULAM DISTRICT (NOW RESIDING AT MELUR P.O. VIA.CHALAKUDY).

3. BRANCH MANAGER, UNITED INDIA INSURANCE COMPANY LTD., BRANCH V. SUNITHA BUILDINGS, II FLOOR, D.B.ROAD, R.S.PURAM, COIMBATORE-641 002.

BY ADV. SMT.P.A.REZIYA FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.323 OF 2000

Dated 11th June, 2007

JUDGMENT

Koshy,J.

Husband of the first appellant died in a motor accident on 7.7.1994 at the age of 40. The young widow with two minor children and mother of the deceased filed an application for compensation claiming a total amount of Rs.5,00,000/=. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. It was further found that the deceased was travelling with the goods of the employer and is covered under the insurance policy. The total compensation awarded was Rs.2,23,500/=. Only quantum of compensation is disputed in this appeal. Taking guidance from the second schedule, the Tribunal fixed 16 as the multiplier. We see no ground to enhance the multiplier fixed by the Tribunal. In this connection, we also refer to the three member bench decision of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451). It is the case of the appellants that the deceased was employed as Manager of a Saw Mill owned by the Kerala Industrial and Marketing Company and he was getting

Rs.4,000/= per month. Ext.A7 certificate was issued by the proprietor of the company stating that the deceased was working as Manager-cum-authorised representative and was getting a monthly salary of Rs.4,000/= apart from other benefits. It is the case that apart from Rs.4,000/= as fixed income, he was also getting some amount by way of commission. The Tribunal did not accept Ext.A7 certificate because the proprietor who issued the certificate was not examined and the certificate has no date. However, no counter evidence was adduced to discredit the evidence of PW1 that the deceased was getting more than Rs.4,000/= per month. The Tribunal has taken only Rs.1,500/= as monthly income. We are of view that the above is a very low amount. He was maintaining a family. He was employed as Manager in a Saw Mill and he met with the accident when he was travelling with the goods as a representative of the above mill. In the above circumstances, we are of the opinion that at least Rs.2,700/= should be fixed as monthly income. One third has to be deducted and Rs.1,800/= will be the monthly loss of dependency. If that be so, compensation payable for loss of dependency will be Rs.1,800 x 12 x 16 = 3,45,600/=. The Tribunal has awarded only Rs.1,92,000/= for loss of dependency. Thus, the appellants are entitled to an additional amount of

Rs.1,53,600/=. It is contended that children were minor and wife was aged only 34 and compensation awarded for loss of consortium, loss of love and affection and fatherly care to the children etc. are very low. Considering the total amount granted, no further enhancement is necessary under other heads. The additional amount of Rs.1,53,600/= should be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit. On deposit of the amount, Rs.25,000/= shall be disbursed to the 4th appellant mother. Appellants 1 to 3 are entitled to get the balance amount in equal proportion. Amounts due to the minors shall be deposited in a Nationalized bank allowing them to withdraw the amount when they attain majority.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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